

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 19, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER MILLER, an
individual; and TAYLOR EYMANN,
an individual,

Plaintiffs,

v.

UNITED SERVICES
AUTOMOBILE ASSOCIATION,
d/b/a USAA CASUALTY
INSURANCE COMPANY, an
interinsurance exchange; and
GARRISON PROPERTY AND
CASUALTY INSURANCE
COMPANY, a Texas Corporation,

Defendants.

NO. 2:23-CV-0294-TOR

ORDER GRANTING PLAINTIFFS'
MOTION FOR REMAND

BEFORE THE COURT is Plaintiffs' Motion for Remand (ECF No. 9). This matter was submitted for consideration without oral argument. The Court has reviewed the record and relevant files and is fully informed. For the reasons discussed below, Plaintiffs' motion for remand is **GRANTED**.

BACKGROUND

This motion for remand arises out of an insurance malpractice case brought by Plaintiffs Christopher Miller and Taylor Eymann. ECF No. 1-3 at 11-21. Plaintiffs are engaged and share a home together in Spokane, Washington. *Id.* at 4, ¶ 5.2. In September 2020, Plaintiffs' residence was damaged by sewage water that flooded the entire lower level of their home. *Id.* at 6, ¶ 5.17. At the time, Plaintiff Miller maintained an active homeowners insurance policy that he claims was issued by Defendant United Services Automobile Association (USAA), doing business as USAA Casualty Insurance Company (CIC), and Defendant Garrison Property and Casualty Insurance Company (Garrison). *See* ECF No. 12-1. Garrison is a subsidiary of CIC, and CIC is a wholly-owned subsidiary of USAA. ECF Nos. 9 at 4; 11 at 4. USAA is a reciprocal interinsurance exchange structured as an unincorporated association. ECF No. 12 at 2, ¶ 2. Both CIC and Garrison are Texas corporations. ECF No. 1-3 at 2, ¶ 1.3.

On September 6, 2023, Plaintiffs filed suit in Spokane County Superior Court against Garrison and USAA. *See* ECF No. 1-3 at 22. Broadly, Plaintiffs claimed that Defendants had violated the Washington Insurance Fair Conduct Act, the Washington Consumer Protection Act, and various statutory and common law duties of good faith and fair dealing. *Id.* at 11-21. Plaintiffs also asserted that Defendants committed the torts of negligence and negligent infliction of emotional

1 distress. *Id.*

2 On September 11, 2023, the Washington State Office of Insurance
3 Commissioner (OIC) accepted service of process on behalf of Garrison. ECF No.
4 10 at 6. On September 19, 2023, the OIC accepted service of process on behalf of
5 USAA. *Id.* at 9. On October 11, 2023, Garrison filed a notice of removal based on
6 diversity jurisdiction, 28 U.S.C. § 1332(a). ECF No. 1. USAA did not join in the
7 notice of removal. *Id.* Plaintiffs now bring the instant motion for remand. *See*
8 ECF No. 9.

9 DISCUSSION

10 Plaintiffs argue that remand is required because Defendant USAA failed to
11 consent to removal. ECF No. 9 at 2; *see* 28 U.S.C. § 1446(b)(2)(A) (“When a civil
12 action is removed solely under section 1441(a), all defendants who have been
13 properly joined and served must join in or consent to removal of the action.”).
14 Defendant Garrison responds that USAA was not a “properly joined” defendant
15 such that its consent to removal was required. ECF No. 11 at 2. Specifically,
16 Defendant argues that (1) USAA did not have a contract with Plaintiffs, and (2)
17 Plaintiffs did not state a valid cause of action against USAA. *Id.*

18 I. Diversity Jurisdiction

19 Under Article III, “[t]he judicial Power shall extend” to “[c]ontroversies . . .
20 between citizens of different States.” U.S. CONST. ART. III, § 2. Drawing from

1 that authorization and beginning with the Judiciary Act of 1789, Congress has
2 continuously permitted federal district courts “to exercise jurisdiction based on the
3 diverse citizenship of parties.” *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).
4 Under the current federal statute governing diversity jurisdiction, “[t]he district
5 courts shall have original jurisdiction of all civil actions where the matter in
6 controversy exceeds the sum or value of \$75,000, exclusive of interests and costs
7 and is between . . . citizens of different States.” 28 U.S.C. § 1332(a)(1).

8 For the court’s exercise of jurisdiction under § 1332(a) to be effective,
9 diversity must be “complete,” meaning “each of the plaintiffs must be a citizen of a
10 different state than each of the defendants.” *Allstate Ins. Co. v. Hughes*, 358 F.3d
11 1089, 1095 (9th Cir. 2004) (citing *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061,
12 1067 (9th Cir. 2001)); *see also Strawbridge v. Curtiss*, 3 Cranch 267 (1806).
13 Further, diversity is based upon the identities of the real parties in interest. *Miss.*
14 *Ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 174 (2014) (“We have . . .
15 require[d] courts in certain contexts to look behind the pleadings to ensure that
16 parties are not improperly creating or destroying diversity jurisdiction.”).

17 A diversity action commenced in state court may be removed “to the district
18 court of the United States for the district and division embracing the place where
19 such action is pending.” 28 U.S.C. § 1441(a). Some exceptions, however, apply.
20 Under the “resident defendant rule,” any removable action under § 1332(a) “may

1 not be removed if any of the parties in interest properly joined and served as
2 defendants is a citizen of the State in which such action is brought.” § 1441(b)(2).
3 Further, “all defendants who have been properly joined and served must join in or
4 consent to the removal of the action.” § 1446(2)(A).

5 A one-year outer time limit applies to removal based on diversity, “unless
6 the district court finds that the plaintiff has acted in bad faith in order to prevent a
7 defendant from removing the action.” § 1446(c)(1). The notice of removal must
8 be filed within 30 days of the defendant’s receipt of a copy of the initial pleading
9 (or if the pleading has yet to be filed, then within 30 days of the service of the
10 summons, whichever period is shorter). § 1446(b)(1). Where multiple defendants
11 are served at different times, each “shall have 30 days after receipt or by service on
12 that defendant of the initial pleading or summons . . . to file the notice of removal.”
13 § 1446(b)(2)(B).

14 As aforementioned, removal based upon diversity jurisdiction requires the
15 consent of all “properly joined” defendants. § 1446(b)(2)(A). However,
16 fraudulently joined defendants provide an exception to this unanimity requirement.
17 *United Computer Sys., Inc. v. AT & T Corp.*, 298 F.3d 756, 762-63 (9th Cir. 2002).
18 “Fraudulent joinder is a ‘legal term of art used to refer to the joinder of
19 unnecessary or nominal parties in order to defeat federal jurisdiction.’” *Kuperstein*
20 *v. Hoffmann-Laroche, Inc.*, 457 F. Supp. 2d 467, 470 (S.D.N.Y. 2006) (internal

1 citation and brackets omitted). A “party invoking federal court jurisdiction on the
2 basis of fraudulent joinder bears a ‘heavy burden’ since there is a ‘general
3 presumption against fraudulent joinder.’” *Weeping Hollow Ave. Trust v. Spencer*,
4 831 F.3d 1110, 1113 (9th Cir. 2016) (quoting *Hunter Philip Morris USA*, 582 F.3d
5 1039, 1046 (9th Cir. 2009)). The removing party must prove, “by clear and
6 convincing evidence,” *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d
7 1203, 1206 (9th Cir. 2007), “(1) actual fraud in the pleading of jurisdictional facts,
8 or (2) inability of the plaintiff to establish a cause of action against the non-diverse
9 party in state court,” *Grancare, LLC v. Thrower by & through Mills*, 889 F.3d 543,
10 548 (9th Cir. 2018) (quoting *Hunter*, 582 F.3d at 1044). Here, Defendant asserts
11 that joinder is fraudulent based on Plaintiffs’ inability to establish a cause of action
12 against USAA. *See generally* ECF No. 11. “[I]f there is a *possibility* that a state
13 court would find that the complaint states a cause of action against any of the
14 resident defendants, the federal court must find that the joinder was proper and
15 remand the case to the state court.” *Grancare, LLC*, 889 F.3d at 548 (quoting
16 *Hunter*, 582 F.3d at 1046) (emphasis in original). The analysis requires the court
17 to “resolve all contested issues of fact and any ambiguities of state law in the
18 plaintiff’s favor.” *Deshong v. Extendicare Homes, Inc.*, No. CV-09-066-JLQ,
19 2009 WL 1764516, at *2 (E.D. Wash. June 19, 2009) (unreported) (quoting *Travis*
20 *v. Irby*, 326 F.3d 644, 648 (5th Cir. 2003)).

II. Party Citizenship Status

At the outset, the Court must resolve the issue of USAA's citizenship status. Plaintiffs suggest that USAA is a diverse party. *See* ECF Nos. 11 (claiming that USAA's consent was required for removal), 13 at 11 (arguing that USAA's "principal place of business [is] in Texas"). While USAA's principal office may be located in Texas, it is actually an interstate insurance exchange, structured as an unincorporated association. ECF No. 12 at 2, ¶ 2. An unincorporated association shares the citizenships of all its members. *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). USAA has members across the nation, including in Washington State. *See, e.g., Lyons v. USAA Casualty Ins. Co.*, 3:22-cv-05462-JHC, 2022 WL 16854273, at *3 (W.D. Wash. Nov. 10, 2022) (unreported) (finding joinder of USAA would destroy subject matter jurisdiction because USAA had members in Washington); *Young v. United Servs. Auto. Ass'n*, CV 20-84-GF-JTJ, 2021 WL 120968, at *2 (D. Mont. Jan. 13, 2021) (unreported) (holding that policyholders of an insurance exchange are "members" for purposes of diversity and that USAA is "a citizen of every state in which it has a member-subscriber"); *Cal. Auto. Ins. Co. v. Basscraft Mfr. Co.*, CV 5:19-2259-MWF-SHK, 2020 WL 730851, at *1 (C.D. Cal. Feb. 13, 2020) (unreported) (same).

Plaintiffs represent that they are Washington citizens for purposes of diversity. *See* ECF No. 1-3 at 1-2, ¶¶ 1.1-1.2; *Kanter v. Warner-Lambert Co.*, 265

1 F.3d 853, 857 (9th Cir. 2001) (“The natural person’s state citizenship is . . .
2 determined by her state of domicile.”). Therefore, if USAA’s presence in this
3 action is permissible, then diversity is not “complete” and this Court must remand
4 the action, regardless of whether Garrison obtained USAA’s consent to removal or
5 not. *See* 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that
6 the district court lacks subject matter jurisdiction, the case shall be remanded.”).¹

7 **III. Fraudulent Joinder**

8 The propriety of remand hinges on whether USAA was a properly joined
9 party. If USAA was fraudulently joined, then diversity is complete, and the Court
10 must retain the action. If USAA is a permissible party to this action, then remand
11 is required for lack of subject matter jurisdiction. § 1447(c).

12 The parties agree that Garrison is a subsidiary of CIC, which is a wholly-
13 owned subsidiary of USAA. *See* ECF Nos. 11 at 4; 13 at 4. “It is a general
14

15 ¹ Even if Plaintiffs were not Washington citizens such that diversity would
16 be complete with USAA’s presence, remand would nevertheless be required
17 because of the resident defendant rule. *See* 28 U.S.C. § 1441(b)(2) (“A civil action
18 otherwise removable solely . . . under section 1332(a) of this title may not be
19 removed if any of the parties in interest properly joined and served as defendants is
20 a citizen of the State in which such action is brought.”).

1 principle of corporate law deeply ingrained in our economic and legal systems that
2 a parent corporation (so-called because of control through the ownership of another
3 corporation's stock) is not liable for the acts of its subsidiaries.” *United States v.*
4 *Bestfoods*, 524 U.S. 51, 61 (1998) (internal quotations and citations omitted). Two
5 general exceptions apply: (1) where “the parent is directly a participant in the
6 wrong complained of,” *id.* at 64, and (2) where the parent is not a direct
7 participant, “the corporate veil may be pierced . . . when, *inter alia*, the corporate
8 form would otherwise be misused to accomplish certain wrongful purposes, most
9 notably fraud, on the shareholder's behalf,” *id.* at 62. Under Washington law,
10 whether the court may pierce the corporate veil or “disregard the corporate entity”
11 is a question of fact. *See* Stephen B. Presser, *Piercing the Corp. Veil* § 2:52 (Dec.
12 2023 Update) (noting that Washington courts refer to the concept of veil-piercing
13 interchangeably as “corporate disregard”). To pierce the corporate veil, (1) “the
14 corporate form must be intentionally used to violate or evade a duty,” and (2)
15 “disregard must be ‘necessary and required to prevent unjustified loss to the
16 injured party.’” *Meisel v. M&N Modern Hydraulic Press Co.*, 97 Wash. 2d 403,
17 410 (1982) (quoting *Morgan v. Burks*, 93 Wash. 2d 580, 587 (1980)). Washington
18 courts also recognize the “alter ego” doctrine, under which “one entity so
19 dominates and controls a corporation [such that the] corporation is the entity's alter
20 ego.” *Rapid Settlements, Ltd.'s Application for Approval of Transfer of Structured*

1 *Settlement Payment Rts.*, 166 Wash. App. 683, 692 (2012) (quoting *Standard Fire*
2 *Ins. Co. v. Blakeslee*, 54 Wash. App. 1, 5 (1989) (internal quotations omitted)
3 (brackets omitted)); *see also Columbia Asset Recovery Grp., LLC v. Kelly*, 177
4 Wash. App. 475, 486 (2013).

5 Defendant Garrison offers two contentions on behalf of why it believes
6 USA's joinder in this action is fraudulent. First, Defendant disclaims USAA's
7 direct liability, asserting that there was no privity of contract between USAA and
8 Plaintiffs. ECF No. 11 at 2; *see Kosovan v. Omni Ins. Co.*, 19 Wash. App. 2d 668,
9 686 (2021) (defendant entity could not be held directly liable for statutory
10 insurance bad faith claim or state consumer protection act claim based on bad faith
11 where plaintiff and entity shared no contractual relationship). Second, Defendant
12 asserts that USAA cannot be held liable for the acts of its subsidiaries under
13 Washington doctrines of corporate veil piercing. ECF No. 11 at 11-13.

14 Defendant maintains that both the insurance policy itself and its
15 correspondence with Plaintiffs belie Plaintiffs' theory of direct liability. ECF No.
16 11 at 4-9. Respecting the policy itself, Defendant offers that the Declarations page
17 names "Company: Garrison Property & Casualty Insurance Company" and that the
18 policy lists a Garrison policy number (GAR 04227-04-19-90A). *Id.* at 4-5 (citing
19 ECF No. 12-1 at 1-2). Defendant admits that the pages of the policy packet are
20 stamped with a USAA logo and state "USAA Confidential" in the bottom margin,

1 but notes that the contract stipulates Garrison is using the logo with USAA's
2 permission. *Id.* (citing ECF No. 12-1 at 15). Defendant also remarks that the
3 policy clarifies that the words "we," "us," and "our" are used on behalf of "the
4 Company providing this insurance," *i.e.*, Garrison. *Id.* (citing ECF No. 12-1 at 16).
5 As to Plaintiffs' correspondence with adjuster Coy Miles, Defendant concedes that
6 the letter from Mr. Miles contains a USAA logo and USAA claim reference
7 number (042270419-3), but presses that the logo is again being used with
8 permission. Additionally, Defendant points out that Mr. Miles self-identified as a
9 representative of Garrison in his e-mail signature bloc. *Id.* (citing ECF No. 10 at
10 15).

11 Based on the evidence presented, the Court is not satisfied that either the
12 policy itself or Plaintiffs' contacts with Mr. Miles establish that there is no
13 possibility Plaintiffs could maintain its claims against USAA in state court. *See*
14 *Grancare, LLC*, 889 F.3d at 548 ("[I]f there is a *possibility* that a state court would
15 find that the complaint states a cause of action against any of the resident
16 defendants, the federal court must find that the joinder was proper."). Defendant
17 correctly observes that the homeowners policy itself identifies Garrison as the
18 insurer issuing the policy and that it states the USAA logo is used with USAA's
19 permission. *See* ECF No. 12-1 at 15 ("This policy is issued by Garrison . . . a
20 subsidiary of USAA Casualty Insurance Company. Garrison is authorized to use

1 the USAA logo, a registered trademark of [USAA]. This is a participating
2 policy.”). However, the policy itself containing these disclosures does not appear
3 in the packet until page 15. Moreover, the policy is emblazoned with the USAA
4 logo and USAA’s address at the top of the page, while the note about Garrison’s
5 role as the issuer of the insurance is at the very bottom of the page beneath the
6 table of contents.

7 Further, in numerous excerpts of the packet leading up to the policy itself,
8 the document refers to USAA without mention of Garrison. For instance, on the
9 first page of the packet, titled in bold as “IMPORTANT MESSAGES,” multiple
10 references are made to USAA and the USAA insignia is displayed at the top. *See*
11 12-1 at 2. The page encourages insureds to contact USAA by phone or online at
12 the USAA website, and states in the first paragraph that “USAA considers many
13 factors when determining your premium.” *Id.* The lone indicia that Garrison
14 might be a party to the contract is the policy number GAR 04227-04-19-90A,
15 which is inconspicuously placed to the far right side of the page. *Id.* Other pages
16 follow a similar pattern. *See, e.g., id.* at 9 (“We’re making some changes to your
17 homeowners policy . . . [i]f after reviewing these changes and explanations, you
18 have any questions, please contact us at 210-531-USAA”), 13 (“Our mission at
19 USAA is to help protect your financial security”); 13 (“[P]lease revise any
20 inaccuracies by: [l]ogging on to usaa.com . . . or [c]alling us at 210-531-USAA.”).

1 Neither does it escape the Court's notice that the policy operative in effect at the
2 time of Plaintiffs' loss was signed by the CEO of USAA, S. Wayne Peacock. *Id.* at
3 4; ECF No. 13 at 6.

4 Plaintiffs' contacts with adjusters and other customer service representatives
5 also give rise to the reasonable inference that Garrison was not the only insurer
6 who had issued the policy. Plaintiff Miller declared that he already had an
7 automobile insurance policy through USAA and signed up for homeowners
8 insurance through USAA by using the same online account as that used for his
9 auto insurance. ECF No. 14 at 2, ¶ 2. When the loss occurred, Plaintiffs used the
10 USAA website to file their claim—per the policy packet's instructions—and
11 interacted with a variety of adjusters and claims persons who held themselves out
12 to be representatives of USAA. *Id.* at 2-5; 9-11. Indeed, even Mr. Miles, whose
13 final settlement e-mail identified himself as an employee of Garrison, purportedly
14 represented that he was a USAA adjuster in an initial voicemail to Plaintiffs. *Id.* at
15 4, ¶ 11. Finally, the check issued for the damages was from USAA, not Garrison.
16 *Id.* at 13.

17 District courts considering analogous sets of facts involving the same
18 Defendants in this action have reached similar conclusions. In *Hall v. United*
19 *Servs. Auto. Ass'n*, for instance, the district court remanded the case because the
20 policy packet's multiple references to USAA and contacts from USAA

1 representatives raised a disputed fact as to whether USAA was an insurer as well
2 as Garrison. *See* No. 21-4-DLB, 2021 WL 4255614, at *3 (E.D. Ky. Sept. 17,
3 2021). However, the court also found it noteworthy that the contract “[did] not
4 expressly state which entity [was] the insurer.” *Id.* at *2. *See also Spriggs v.*
5 *United Servs. Auto. Ass’n*, No. 1:23CV7, 2023 WL 3626503, at *5 (M.D.N.C. May
6 24, 2023) (finding remand was warranted where the policy in question did not
7 identify Garrison alone as the issuing insurer, made multiple references to both
8 Garrison and USAA, and USAA paid an advance on the plaintiffs’ claim).

9 Unlike in *Hall* and *Spriggs*, the policy in question here explicated that “[t]he
10 policy [was] issued by Garrison.” ECF No. 12-1 at 15 (bottom text). However, the
11 buried placement of that disclosure within the packet, numerous other more
12 prominent references to USAA, USAA’s role in working with Plaintiffs, and
13 USAA’s attempted settlement of Plaintiffs’ claim, could all lead a reasonable
14 person in Plaintiffs’ position to believe that USAA was an issuing insurer. *See*
15 *Albi v. Street & Smith Publ’ns*, 140 F.2d 310, 312 (9th Cir. 1944) (“In borderline
16 situations, where it is doubtful whether the complaint states a cause of action
17 against the resident defendant, the doubt is ordinarily resolved in favor of the
18 retention of the case in state court.”) (internal quotations and citations omitted)
19 (unreported). As such, the Court cannot conclude without reservation that USAA
20 was not a party to Plaintiffs’ contract of insurance, or that there is no remote

1 possibility that Plaintiffs could establish a cause of action against USAA in state
2 court.

3 Accordingly, Defendant's claim of fraudulent joinder must be denied and the
4 matter remanded to Spokane County Superior Court. *See* 28 U.S.C. § 1447(c).
5 The Court does not reach Defendant's alternative arguments pertaining to
6 corporate veil piercing.

7 **III. Attorney's Fees**

8 In their Reply brief, Plaintiffs claim they are entitled to an award of
9 attorney's fees and costs. *See* ECF No. 13 at 13-14. When entering an order of
10 remand, the Court may also award "just costs and any actual expenses, including
11 attorney fees, incurred as a result of the removal." § 1447(c). The Supreme Court
12 has specified that "the standard for awarding fees should turn on the
13 reasonableness of the removal. Absent unusual circumstances, courts may award
14 attorney's fees under § 1447(c) only where the removing party lacked an
15 objectively reasonable basis for seeking removal." *Martin v. Franklin Capital*
16 *Corp.*, 546 U.S. 132, 141 (2005). Here, the Court finds that Defendant Garrison
17 had a sufficiently reasonable basis for attempting to remove this action. Therefore,
18 Plaintiffs' request for attorney's fees and costs under § 1447(c) are denied.

19 //

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for Remand (ECF No. 9) is **GRANTED**. The matter
3 is hereby **REMANDED** to the Spokane County Superior Court, State of
4 Washington, for all further proceedings (former Spokane County No.
5 23203643-32).

6 2. Plaintiffs' request for attorney's fees and costs (ECF No. 13) is
7 **DENIED**.

8 The District Court Executive is directed to enter this Order, furnish copies to
9 counsel, *mail a certified copy to the Clerk of the Spokane County Superior Court*,
10 and **CLOSE** the file.

11 DATED December 19, 2023.



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A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge